

## EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLUMBIA  
3 UNITED STATES OF AMERICA, .  
4 Plaintiff, . CR No. 08-231  
5 v. .  
6 THEODORE F. STEVENS, . Washington, D.C.  
7 Defendant. . Wednesday, August 20, 2008  
8 . 11:17 a.m.  
9 . . . . .

10 TRANSCRIPT OF MOTION FOR CHANGE OF VENUE  
11 BEFORE THE HONORABLE EMMET G. SULLIVAN  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Government: BRENDA MORRIS, ESQ.  
15 EDWARD SULLIVAN, ESQ.  
16 NICHOLAS MARSH, ESQ.  
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P R O C E E D I N G S

COURTROOM DEPUTY: 08-231, United States versus  
Theodore Stevens.

Will counsel please identify yourselves for the  
record?

MS. MORRIS: Good morning, Judge. Brenda Morris, Nick  
Marsh, and Ed Sullivan for the government.

THE COURT: Good morning, counsel.

MR. B. SULLIVAN: Good morning, your Honor. Brendan  
Sullivan, Rob Cary, Alex Romain for Senator Stevens.

THE COURT: Good morning, counsel. It's your motion.

MR. B. SULLIVAN: Thank you.

I think that in the history of the Republic it's  
probably safe to say that there have never been more than forty  
witnesses that will travel round trip seven thousand miles to  
get to a trial.

THE COURT: Well, some may not have to travel. We  
have video-conferencing capability. State-of-the-art. It's HD  
quality.

MR. B. SULLIVAN: My dearly beloved senior partner, Ed  
Bennett Williams, died twenty years ago today. I don't think  
he'd ever advise me to permit a video if we can get the real  
live witness right here that close to a jury. In the forty  
years I've been doing this, I think there may be sometimes it's  
necessary, you just don't get the witness otherwise, and that

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1 technology has to be used, and I think it can be used  
2 effectively, but not as effectively, especially in the area of  
3 cross-examination, your Honor. I think it's crucial to have the  
4 witnesses here.

5 THE COURT: But you raise another point, though. The  
6 government hasn't said that it would have problems producing its  
7 witnesses, so your right to cross-examining is not adversely  
8 impacted at all. You will have the right within reason to  
9 vigorously cross-examine the government witnesses, and they  
10 haven't indicated to the Court there's any hardship whatsoever,  
11 and indeed the Court would not be sympathetic to the  
12 government's request to allow its witnesses to participate by  
13 way of video-conferencing because that would probably intrude on  
14 your client's confrontational rights, so I wouldn't allow that.

15 MR. B. SULLIVAN: Right.

16 THE COURT: You're going to have the right to cross-  
17 examine to your heart's content if the case stays here or  
18 wherever the case is tried.

19 MR. B. SULLIVAN: I certainly wouldn't expect the  
20 government to claim hardship for its witnesses. I guess it may  
21 not be true, but from where we sit, it looks like the government  
22 has a lot of assets, and transporting witnesses in order to have  
23 a case in the District of Columbia I'm sure is not of any  
24 concern to our United States government. The government --

25 THE COURT: It's a concern to the Court, though.

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4

1 MR. B. SULLIVAN: Yes, your Honor.

2 THE COURT: And the Court seriously considers your  
Page 3

1 brief response to the question of timing?

2 THE COURT: Sure, sure.

3 MR. MARSH: Your Honor, I just wanted to respond very  
4 briefly to the question of the timing. As Mr. Sullivan  
5 indicated, there were a number of tolling agreements entered  
6 into in this case. I don't believe it's relevant to go into a  
7 significant amount of detail about the circumstances, but I  
8 would like to represent from the government's view that there  
9 were a number of reasons why those agreements were entered into.  
10 There were a number of factors relating to them and we do not  
11 believe that the defendant was unaware about the timing issues  
12 the government faced with respect to this indictment.

13 THE COURT: It's your motion, counsel. You have the  
14 right to have the next to last word, anyway.

15 MR. B. SULLIVAN: Your Honor, I have no reason in the  
16 world to understand why this case wouldn't have been brought  
17 after an election. None.

18 THE COURT: All right. I'm prepared to rule today on  
19 this. I want to take about a five-minute recess and I'll  
20 announce my ruling when I return. Thank you. No need to stand.

21 COURTROOM DEPUTY: This Honorable Court now stands in  
22 a brief recess.

23 (Recess taken at about 12:13 p.m.)

24 COURTROOM DEPUTY: Please remain seated and come to  
25 order.

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45

1 (Back on the record at about 12:19 p.m.)

2 THE COURT: All right, counsel. Federal Rule of  
3 Criminal Procedure 21(b) provides, and I quote, that "upon the  
4 defendant's motion, the Court may transfer the proceeding, or  
5 one or more counts, against that defendant to another district  
6 for the convenience of the parties and witnesses and in the  
7 interest of justice." End quote. The defendant bears the  
8 burden of establishing that the case, and I quote, "would be  
9 better off", end quote, transferred to another district. In  
10 that regard, see United States versus Quinn, 401 Fed Supp. 2d,  
11 80, 85, an opinion by my colleague, Judge Bates. In determining  
12 whether a case should be transferred under Federal Rule of  
13 Criminal Procedure 21(b), the Court must consider ten factors:  
14 location of the defendant, location of possible witnesses, the  
15 location of events likely to be an issue, location of documents  
16 and records likely to be involved, the disruption of defendant's  
17 business unless the case is transferred, expense to the parties,  
18 the location of counsel, relative accessibility of the place of  
19 trial, the docket condition in each district or division  
20 involved, any other special elements that might affect transfer.  
21 And those factors were particularly articulated by the Supreme  
22 Court in the case of Platt versus Minnesota Mining and  
23 Manufacturing Company.

24 Upon consideration of those factors and written and  
25 oral arguments advanced by the parties, the Court denies

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46

1 defendant's motion to transfer this proceeding to the District  
2 of Alaska for the following reasons:

3           In United States versus Quinn my colleague, Judge  
 4   Bates, considered and denied an analogous motion to transfer a  
 5   case to the Eastern District of Kentucky. In his opinion  
 6   denying the motion the Court stated that while the, quote,  
 7   "fact- intensive and discretionary nature of the Platt inquiry  
 8   makes it difficult to generalize about how courts decide which  
 9   of two districts is more appropriate, some patterns are  
 10   discernible. End quote. For example, he noted a presumption  
 11   favoring the government's choice of forum, as long as venue is  
 12   proper, and that, and I quote, "if consideration of the Platt  
 13   factors leaves the Court in equipoise, the Court should err on  
 14   the side of caution and deny the motion. End quote. Judge  
 15   Bates concluded, and I quote, "The Court's own research supports  
 16   the observation to transfer under Rule 21(b) although not  
 17   unheard of, has been rare in recent years. This is hardly  
 18   surprising when one considers the massive expansion of  
 19   technology and the relative decline in costs for long-distance  
 20   travel over the past few decades. End quote.

21           This Court is persuaded by the rationale of Judge  
 22   Bates' ruling. The Court will summarize the parties' respective  
 23   arguments as to each factor, or note where the parties agree  
 24   that the factor is neutral, and give my recommendation.

25           With respect to the location of the defendant, the

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47

1   defense argues that this factor weighs heavily in favor of  
 2   transfer and cites cases for the proposition that it is, quote,  
 3   "preferable to try a defendant in the district where he resides.

4 End quote.

5 The defendant also points out that Senator Stevens'  
6 residence in Alaska and the value of renovations to that  
7 residence is the focus of that indictment and the case and to,  
8 quote, "assist the jury in understanding that these renovations,  
9 Senator Stevens intends to request that the Court permit a jury  
10 visit to his Girdwood residence. End quote.

11 The government counters that the senator works in the  
12 District of Columbia. The government has represented Alaska  
13 since 1968; he owns a home in D.C. and his wife is a partner in  
14 a law firm in D.C. The government notes that if the trial is  
15 here, the Senator will be able to maintain close contact with  
16 his Senate office and live in his own home. In addition to the  
17 Quinn case, the government cites Jones versus Gasch, G-a-s-c-h,  
18 404 Fed 2d 1231, another opinion from the District of Columbia  
19 Circuit affirming a denial of a motion to transfer and noting  
20 that the district court found that residence was, quote, "a  
21 factor to be considered," end quote, but, quote again, "not the  
22 controlling factor." End quote.

23 The Court is of the opinion this factor weighs in  
24 favor of the government. Unlike cases where the defendant would  
25 be tried away from home in an unfamiliar city, Senator Stevens

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48

1 lives in Washington, D.C. for at least a substantial part of the  
2 year. So far in 2008, the Senate has been in session for a  
3 total of 96 out of 232 calendar days, about 41 percent.

4 The second factor, location of possible witnesses,  
5 defendant argues that this is one of the most significant



6 factors in the analysis and that it weighs heavily in favor of  
7 transfer. Defense notes that the government intends to call  
8 more witnesses from Alaska than any other jurisdiction and  
9 contends that all the government's key witnesses are from Alaska  
10 and that more than ninety percent of the witnesses Senator  
11 Stevens intends to call are residents of Alaska.

12 The government again cites to Quinn, where Judge Bates  
13 found that although more witnesses resided in Kentucky than in  
14 Washington, D.C., there were also a number of witnesses who  
15 resided in other jurisdictions and would have to travel in any  
16 event. The government also cites to United States versus Spy  
17 Factory, 951 Fed Supp. 450, a case decided by the Southern  
18 District of New York, holding that, and I quote, "a naked  
19 allegation that witnesses will be inconvenienced by trial in a  
20 distant forum will not suffice for transfer", end quote, and  
21 defendant, quote, "must offer specific examples of witnesses'  
22 testimony and their inability to testify because of the location  
23 of the trial." End quote. Here, the government argues,  
24 defendant has not even made a threshold showing that witnesses  
25 will be unable to testify here.

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49

1 The Court's persuaded by that argument. This factor  
2 does not weigh in favor of transfer. There's been no showing  
3 that Senator Stevens will be unable to call his witnesses if the  
4 trial is here. Moreover, it appears that D.C. is far more  
5 accessible than Anchorage, Alaska for the witnesses who would  
6 have to travel to either forum.

7 Further, this courthouse is equipped with  
8 video-conferencing capability to ameliorate any travel hardship  
9 to any witness.

10 The third factor, the location of events likely to be  
11 an issue, the defendant argues that all of the alleged  
12 underlying conduct took place in Alaska, this is a significant  
13 factor in the analysis, and that it weighs in favor of transfer.

14 The government counters that this is a case about a  
15 scheme to conceal, through the submission of false financial  
16 disclosure forms to the United States Senate and that the  
17 financial disclosure forms were created, reviewed, signed,  
18 submitted, and filed in the District of Columbia. In addition,  
19 the government notes that some of the alleged conduct occurred  
20 in Washington, D.C. finally, citing Quinn, the government notes  
21 that this factor is more focused, quote, "to contemplate a case  
22 where jurors might benefit from a visit to a crime scene or  
23 might require some understanding of local geography." End  
24 quote. The government notes that the Girdwood residence is not  
25 a crime scene, that there are more than 1,000 high-resolution

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50

1 digital photos of the residence which could suffice if any of  
2 the physical features of the home are relevant in trial.

3 The Court does not draw this factor as one it favors.  
4 The financial disclosure forms are required by the United States  
5 Senate and are filed here, and thus any falsification of the  
6 forms was committed here. Moreover, there should be no need for  
7 a visit to the Senator's Alaska residence to view the  
8 renovations. Any view can be accomplished by viewing

9 photographs or films of the residence.

10 The fourth factor, location of documents and records  
11 likely to be involved, the parties basically agree this a  
12 neutral factor.

13 The fifth factor, disruption of the defendant's  
14 business unless the case is transferred, the defendant relies  
15 most heavily on this factor, arguing that the trial here will  
16 prevent him from campaigning in Alaska in the weeks immediately  
17 prior to the election.

18 The government responds that Senator Stevens requested  
19 the transfer motion. Moreover, the government offers persuasive  
20 argument that the Senator's campaign status is a substantial  
21 reason against transfer and that his intention to campaign  
22 during the trial could lead to significant potential for jury  
23 tainting and media exposure.

24 The government's argument is persuasive and this  
25 factor can be further neutralized if the Court determines, as it

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51

1 has, that it will not hold trial on Fridays. That's a decision  
2 that the Court will give further consideration to after  
3 obtaining additional input from both sides. By not sitting on  
4 Fridays this will allow Senator Stevens to travel to Alaska and  
5 campaign on weekends, arguably more time than he would have if  
6 the trial were held five days a week in Alaska. This would also  
7 reduce the risk of jury exposure to the media. Further, this is  
8 a travel schedule that will not be unfamiliar to the defendant.  
9 It is fairly common knowledge that many or all senators and

10 presumably Senator Stevens regularly return to their home states  
11 for the weekends. By the way, the Senate often is not in  
12 session on Mondays and Fridays. So far in 2008 there have been  
13 only five weeks where the Senate was in session for all five  
14 days.

15 The sixth factor, the expense to the parties, the  
16 experts essentially agree this factor is neutral in the papers  
17 filed, although the Court has heard some unsubstantiated  
18 evidence today with regards to expense, but the Court doesn't  
19 factor the expense issue into the decision-making process at  
20 this time because, other than a vague argument about expenses,  
21 there's been no evidence to persuade the Court that the expense  
22 to the parties is a significant factor in this case.

23 The location of counsel, defendant -- strike that.  
24 Defense argues this factor is likely neutral. Government argues  
25 that if anything, it tips against transfer. In the Court's view

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52

1 the factor does not favor transfer. The investigation was done  
2 principally here in the District of Columbia and Alaska as well  
3 to a certain extent. The lead prosecutors are here and the  
4 defendant's defense counsel's firms has offices here.

5 Relative assessibility to place of trial. The parties  
6 agree this factor is essentially neutral.

7 The docket, the ninth factor, docket condition of each  
8 district or division involved. Defense argues that this factor  
9 is neutral because the Court has agreed to an early trial date  
10 and they ask that the Court preside over the trial in Alaska,  
11 and indeed the Court's flattered.

12           The government argues that this factor weighs against  
13 transfer because transfer would likely require this Court or  
14 another district judge to travel to Alaska to preside over the  
15 trial. Arguably there could be issues of judicial recusal by  
16 active judges in the U.S. District Court for Alaska. Moreover,  
17 in a footnote the government references this Court's recent  
18 experiences with high profile cases and the procedures in place  
19 to deal with significant media attention and note that the court  
20 in Alaska may not be similarly equipped.

21           This factor in the Court's view weighs against  
22 transfer. Moreover, although the government concedes the  
23 recusal issue is speculative, it is not entirely far-fetched.  
24 Having this Court move to Alaska would almost certainly cause  
25 delay. This Court went to great lengths, emphasis added, great

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53

1       lengths, to rearrange its calendar to give the defendant an  
2 early trial date here in the District of Columbia and the  
3 defendant assumes that the Court will be able to stick to the  
4 same trial date even if the trial were moved to Alaska. The  
5 disruption to the Court's calendar and cases it presides over  
6 would be significantly adversely impacted. It's doubtful that  
7 the Court would be able to conduct its normal Friday business  
8 while on detail in business.

9           And finally, as we know, the Court in Alaska is  
10 unequipped to handle the media and other logistical issues  
11 associated with this case.

12           Any other special elements that might effect transfer:

13 The defendant doesn't really articulate any others.

14 The government argues, and the Court is persuaded,  
15 that because the defendant is up for reelection in Alaska and  
16 will be campaigning, that's actually a reason not to transfer  
17 the trial to Alaska.

18 The Court's persuaded by that argument as well.  
19 Senator Stevens has asked for an early trial date and the Court  
20 gave him the date he asked for. The wrongdoing alleged in the  
21 indictment occurred here. The factors weighing most heavily in  
22 favor of transfer (location of possible witnesses and disruption  
23 to defendant's business) do not outweigh the factors against  
24 transfer (docket conditions, etcetera,) especially where the  
25 Court will not hold trial on Fridays. Any transfer would almost

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54

1 certainly lead to delay and additional expense.

2 And that's the Court's ruling. The motion to transfer  
3 then is denied.

4 Having addressed the only issue before the Court, I  
5 want to briefly talk about a related issue because now it is  
6 truly related, and that's the question of voir dire. The  
7 parties have complied with the Court's order and have submitted  
8 joint proposed questions, individually proposed questions. I've  
9 seen your proposals. I've not had a great deal of time to focus  
10 on this. I do want to focus on what I believe was an offer by  
11 the government to -- let me hear from the government with  
12 respect to copying the questionnaires, photocopying the  
13 questionnaires. That's a major problem that requires the  
14 utilization of resources that the Court may not have available